

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



MARLIES A. WESOLOWSKI,

Plaintiff,

v.

21-CV-751

POLISH COMMUNITY CENTER
OF BUFFALO, INC., d/b/a
LIEUTENANT COLONEL MATT
URBAN HUMAN SERVICES CENTER
OF WESTERN NEW YORK,

Defendant.

DECISION AND ORDER

Plaintiff Marlies A. Wesolowski commenced this action on June 18, 2021, seeking relief under the Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* (“ADEA”), the Americans with Disabilities Act, 42 U.S.C. § 12201 *et seq.* (“ADA”), and the New York Human Rights Law, N.Y. Exec. L. § 296 *et seq.* (“NYHRL”). The Complaint sets forth five causes of action: (1) disability discrimination under the ADA; (2) age discrimination under the ADEA; (3) disability discrimination under the NYHRL; (4) age discrimination under the NYHRL; and (5) gender discrimination under the NYHRL.

On October 8, 2021, Defendant moved to dismiss the Complaint. Dkt. 9. Plaintiff opposed the motion, and Defendant replied. Dkt. 13, 17. This Court ultimately referred the case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 19.

On August 12, 2022, Judge Roemer issued a Report and Recommendation (“R&R”), recommending that this Court grant Defendant’s motion in part. Dkt. 25. Specifically, Judge Roemer recommended that Plaintiff’s age and disability discrimination claims should survive, but her gender discrimination claim should be dismissed. Dkt. 25 at 20.

Defendant objected to the R&R. Dkt. 28. Specifically, Defendant objected “to the portion of the Report and Recommendation that recommended against dismissing the first, second, third, and fourth causes of action.” *Id.* at 3-4. Plaintiff responded to Defendant’s objections, and Defendant replied. Dkt. 30, 31.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. *See* 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).

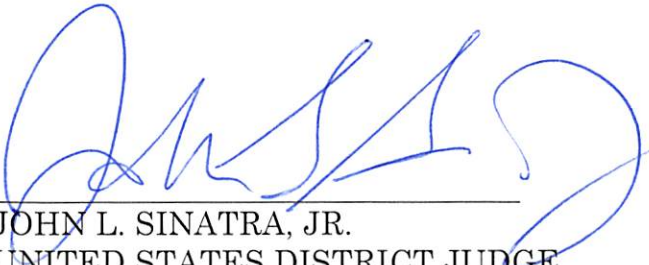
This Court carefully reviewed the R&R. Based on its *de novo* review, the Court accepts Judge Roemer’s recommendation.

For the reasons stated above and in the R&R, the Court GRANTS, in part, and DENIES, in part, Defendant’s motion to dismiss (Dkt. 9). As a result, Plaintiff’s age and disability discrimination claims survive, but her gender discrimination claim is dismissed. This case is referred back to Judge Roemer for

further proceedings consistent with the referral order of December 2, 2021. *See*
Dkt. 19.

SO ORDERED.

Dated: October 7, 2022
 Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE